

**PHYLLIS K. BERENS**  
Claimant

**BOEING COMPANY**  
Respondent

**INS. CO. OF STATE OF PA.**  
Insurance Carrier

## ORDER

## ISSUES

The sole issue raised on review by the claimant is whether the ALJ erred in denying benefits. Claimant argues that the incident at work on August 16, 2001, caused an aggravation of a preexisting condition and should be compensable.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The ALJ's Order contains a detailed recitation of the facts and it is not necessary to repeat those findings and conclusions in this Order. The Board approves those findings and conclusions and adopts them as its own.

As detailed in the ALJ's Order, claimant had a history of low back complaints which had culminated with surgery in October 1999. After the surgery claimant continued to receive follow-up treatment for continuing complaints of lower back pain radiating into the left leg.

Claimant argues she suffered an aggravation of her pre-existing low back condition on August 16, 2001, when she lifted some parts from a container to place on a cart.

An injury is compensable under the Workers Compensation Act even when the accident only serves to aggravate a preexisting condition.<sup>1</sup> The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates a preexisting condition.<sup>2</sup>

The ALJ noted claimant had been and continued to receive treatment for her preexisting low back condition when the incident occurred on August 16, 2001. The ALJ concluded that claimant's complaints to the treating doctor both before and after the incident remained the same. Stated another way, the Judge's conclusion was that the claimant's continuing medical treatment after the incident was a natural and probable consequence of her preexisting condition and the condition for which she continued to receive medical treatment had not been aggravated or accelerated by the August 16, 2001, incident.

The contemporaneous medical records of the treating physician, Dr. Earl Mills, corroborates the Judge's conclusion. The records do not note a sudden worsening or acceleration of claimant's condition after August 16, 2001. Instead, there was a dramatic decrease in pain noted in the doctor's notes dated October 10, 2001.

Finally, claimant applied for and received medical disability benefits by representing that the condition was not work related. Her request for a leave of absence also indicated it was for a non-work-related medical condition. For these combined reasons, the Board agrees with and affirms the ALJ's decision denying preliminary benefits.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>3</sup>

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<sup>1</sup> *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>2</sup> *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

<sup>3</sup> K.S.A. 44-534a(a)(2).

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of ALJ John D. Clark dated October 4, 2002, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of December 2002.

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BOARD MEMBER

c: James B. Zongker, Attorney for Claimant  
Eric K. Kuhn, Attorney for Respondent  
John D. Clark, Administrative Law Judge  
Director, Division of Workers Compensation